

### REMARKS

Reconsideration in view of the foregoing amendments and following remarks is respectfully requested.

Reconsideration in view of the foregoing amendments and the following remarks is respectfully requested.

This amendment is in response to the Office action dated October 03, 2003, in which claims 2-21 and 26-37 were rejected and claims 1 and 22-25 were allowed.

This amendment cancels claims 6, 10 and 31-37 and amends claims 2, 3, 5, 7-9 and 15 in such manner as to overcome all of the rejections given by the Examiner in the Office action dated October 03, 2003, against claims 2-21. In addition, this amendment points out why the rejection of claims 26-30 as given by the Examiner in the Office action of October 03, 2003, is not well founded and, therefore, should be withdrawn.

More specifically, and first of all, it should be noted that independent claim 3 has been amended along with dependent claims 5 and 7-9 to overcome the rejection under the second paragraph of 35 U.S.C. 112 given in the Office action of October 03, 2003. In that rejection, the Examiner stated that claims 3-21 were indefinite because it was not clear what structure was represented by the language "means for preventing accidental falls" appearing in independent claim 3. This rejection is well-taken and as a result that indefinite language has been eliminated from the claim. Also, the term "means" has been eliminated from the dependent claims 5, 7 and 8. As a result, the claims are no longer indefinite and, accordingly, the rejection under the second paragraph of 35 U.S.C. 112 has been obviated.

Further in the Office action of October 03, 2003, claims 3, 4, 6, 11-14 and 19-21 were rejected under 35 U.S.C. 102(b) as being anticipated by Boatman (US 3,988,845). In explaining Boatman, the Examiner pointed to part 28 therein as

corresponding to the part now expressed in part b. of independent claim 3 and in dependent claims 5 and 7-9 as a "rail". Of course, the part 28 in Boatman clearly is not a "rail" and certainly does not operate or function to prevent people from accidentally falling or to protect people in any manner whatsoever. The part 28 in Boatman is a mere carrying handle for carrying the small, portable, briefcase-like sign device which is the subject matter of the Boatman patent. In other words, the part 28 of Boatman simply is not a rail under any dictionary definition of the term "rail". Moreover, the part 28 of Boatman clearly does not satisfy the height and strength characteristics now set forth in the new part c. of independent claim 3. The claims as amended now even further define over Boatman because they now all positively include an electronic display on the front panel of the enclosure and electronic components housed within the enclosure; see part a. of base claim 3. The Boatman sign or display apparatus has no electronic parts but is entirely mechanical.

Still further in the Office action of October 03, 2003, claims 5 and 7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Boatman in view of Pick et al. (U.S. 2,867,306); claims 8-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Boatman in view of Bauer (sic, Baur) et al. (U.S. 5,259,089); and claims 16-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Boatman in view of Tucker (U.S. 6,314,669). All of these rejections rely on Boatman as the primary reference. As explained above, claim 3 upon which all of these claims 5, 7, 8-10 and 16-18 depend has been amended to define over Boatman, and the secondary references Pick et al., Bauer (sic, Baur) et al., and Tucker do not add anything to change this fact. Consequently, all these claims are now rendered allowable by the amendment to claim 3.

Also in the Office action dated October 03, 2003, claims 31-37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker (US 6,314,669) in view of Surman (US 5,522,540). Claims 31-37 are now canceled.

Still continuing, in the Office action dated October 03, 2003, claims 3-5, 11-16, 19-21 and 26-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. (US 5,353,891) in view of Stadjuhar et al. (US. 5,497,573). As to claims 3-5, 11-16 and 19-21, the amendment to independent claim 3 specifying that the rail is "mounted directly to the top panel of the enclosure" patentably distinguishes over this combination of references. As to claims 26-30, the recitations in base claim 26 specifying that there is provided "a sight line from the seating deck structure under the rail" and that the angled top panel is "below the line of sight from the seating deck structure" distinguish over this combination of references because there is no teaching in these references that sight lines of this sort should be provided. For instance, if an enclosure were to be mounted directly beneath the lower plate 44 at the upper end of the support post 38 in Griek et al., no such lines of sight would be provided. The Examiner has exercised hindsight in combining these two references. No motivation to combine them such as to arrive at the claimed construction exists.

Yet further in the Office action dated October 03, 2003, claims 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. in view of Stadjuhar et al. and Voigt (U.S. 5,566,926); claims 2, 16, 17 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. in view of Stadjuhar et al. and Anderson et al. (US 2,765,554); and claims 31-37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Griek et al. in view of Stadjuhar et al. and Anderson et al. and Surman (US 5,522,540). Claims 31-37 have

been canceled. As to claims 8, 9 and 16-18, these claims all are dependent on claim 3 and therefore distinguish over the applied Griek et al. and Stadjuhar et al. references for the same reasons as those given above with respect to these same references as applied to claim 3. Further, as to claims 8 and 9, the rail 48 in Griek et al. is secured by the pegs 46 and the plates 44, and there is no suggestion whatever to provide it with threaded ends. This leaves only claim 2 to be discussed, and it distinguishes over Griek et al. taken with Stadjuhar et al. by the limitation now inserted into part d. of the claim: namely, that the rail is attached directly to the upper enclosure surface.


The allowance of claims 1 and 22-25 is noted with appreciation. For the foregoing reasons, claims 2-21 and 26-30, all the remaining claims in this case, are now viewed to be allowable also.

If there are any further issues yet to be resolved to advance the prosecution of this patent application to issue, the Examiner is requested to telephone the undersigned counsel so that such issues may be resolved expeditiously.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

HUGH D. JAEGER, P.A.

  
\_\_\_\_\_  
Hugh D. Jaeger  
Registration No. 27,270  
1000 Superior Blvd., Suite 302  
Wayzata, MN 55391-1873  
Telephone: 952-475-1880  
Facsimile: 952-475-2930

02/03/2004

MYFILES\PLEAD\PL4413